

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition of )  
 )  
TRANS-TECH RESOURCES, INC. )  
 )  
For Review of Cleanup and Abatement )  
Order No. 88-109 of the California )  
Regional Water Quality Control )  
Board, Santa Ana Region. Our )  
File No. A-592 )  
\_\_\_\_\_ )

ORDER NO. WQ 89-14

BY THE BOARD:

On November 10, 1988, the California Regional Water Quality Control Board, Santa Ana Region (Regional Board) adopted Cleanup and Abatement Order No. 88-109 (the Order). The Order provides for the cleanup of soil and ground water contaminated by diesel fuel and gasoline where a gas station had operated for many years. The pollution was caused by a leaking underground fuel tank. The property where the contamination originated is located at 23991 Torro Road in the Laguna Hills area of Orange County (the Property). One of the responsible parties named in the Order is Wright Petroleum Company dba Willbarb Petroleum Carriers, Inc. (Wright) which has operated a gas station at the Property since October 1983. Wright discovered the leaking tank and has investigated the pollution plume and performed some cleanup. Also named as dischargers are Emerald Oil Company, which operated a gas station at the Property from January 1982 to October 1983 and Trans-Tech Resources, Inc. (Trans-Tech) which operated a gas station there prior to January 1976 and until

January 1982. The current owner of the Property, LHC Associates, is also included in the Order as is a previous owner, Rossmoor Corporation. Trans-Tech has petitioned the State Board for review of the Order. None of the other parties named in the Order have filed petitions.

#### I. BACKGROUND

Wright leases the Property and operates a gas station there. In 1983, Wright discovered a diesel fuel leak and identified a plume of floating product which included both diesel and gasoline constituents. The pollution plume had migrated to a neighboring property owned by Home Federal Savings and Loan Association. In 1986, by Cleanup and Abatement Order No. 86-14, the Regional Board ordered Wright to cleanup the pollution. Unfortunately, the recovery system which Wright installed did not work effectively.

In July 1988, Wright gave the Regional Board a list of property owners and former gas station operators at the Property. Included in this list was Trans-Tech which operated a gas station at the Property prior to January 1976 and until January 4, 1982. Trans-Tech was a corporation which formally dissolved on November 16, 1982.

On November 10, 1988, the Regional Board adopted Cleanup and Abatement Order No. 88-109 which named Wright, Trans-Tech, and several other responsible parties. The Order required them to conduct further subsurface investigations and to cleanup the pollution.

Trans-Tech petitioned the State Board for review of the Order on the sole grounds that the Order cannot be enforced against it because it is a dissolved corporation. Trans-Tech did not challenge the Regional Board's finding that it had caused the pollution.

## II. CONTENTION AND FINDING

1. Contention: Petitioner contends that a cleanup and abatement order issued under Water Code Section 13304 cannot be enforced against a dissolved corporation.

Finding: A dissolved corporation ceases to exist for all purposes except as provided by statute. (Crossman v. Vivienda Water Co. (1907) 150 Cal. 575, 89 Pac. 335).

Continued existence after dissolution, for the purposes of this matter, is governed by Corporations Code Section 2010(a) which states:<sup>1</sup>

"2010(a) A corporation which is dissolved nevertheless continues to exist for the purpose of winding up its affairs, prosecuting and defending actions by or against it and enabling it to collect and discharge obligations, dispose of and convey its property and collect and divide its assets, but not for the purpose of continuing business except so far as necessary for the winding up thereof." (Emphasis added).

Pursuant to this statute, "There is no time limitation for suing a dissolved corporation for injuries arising out of its predissolution activities other than the time prescribed by the

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<sup>1</sup> All references are to the Corporations Code unless otherwise specified.

applicable statute of limitations." (North American Asbestos v. Superior Ct. (1986) 180 Cal.App.3d 906, 225 Cal.Rptr. 877; North American Asbestos v. Superior Ct. (1982) 128 Cal.App.3d 138, 143, 179 Cal.Rptr. 889; Allen v. Southland Plumbing (1988) 201 Cal.App.3d 64, 246 Cal.Rptr. 860; Abington Heights School District v. Speedspace Corp. (1982 Third Cir.) 693 F.2d 284).

Petitioner, Trans-Tech argues that it is the equivalent of a dead person and cannot be required to perform the activities mandated by the Order. That argument has no merit. The California Supreme Court has ruled that a dissolved corporation can be required to carry out the actions necessary to abate a nuisance. The Supreme Court noted that an injunction against a dissolved corporation may be carried out by its shareholders, just as it would be if the corporation was in existence (Katencamp v. Superior Court (1940) 16 Cal. 696, 108 Pac.2d 1).

Petitioner's arguments fail to focus on the true questions in this case. First, is a cleanup and abatement order an "action" as that term is used in Section 2010(a)? Second, is the Order barred by the statute of limitations?

The second question will be discussed first. Code of Civil Procedure Section 338(i) imposes a three-year statute of limitations on "actions" brought under the Porter-Cologne Act. It states:

"An action commenced under the Porter-Cologne Water Quality Control Act (Division 7 (Commencing with Section 13000) of the Water Code). The cause of action in that case shall not be deemed to have accrued until the discovery by the State Water Resources Control Board, or regional water quality

control board of the facts constituting grounds for commencing actions under their jurisdiction."

The State Board has held that this statute of limitations does not apply to cleanup and abatement orders because Code of Civil Procedure Section 338(i) only applies to "civil actions" which are actions in court. The State Board has concluded that there is no statute of limitations applicable to State and Regional Board enforcement orders. (State Board Order No. WQ 84-6 (Logsdon); see Code of Civil Procedure Section 312).

If a cleanup and abatement order is not a "civil action", the question remains, is a cleanup and abatement order an "action" as that term is used in the Corporations Code?

There is no case applying Section 2010(a) to an administrative proceeding and the Corporations Code does not define the term "action." The term is defined in Code of Civil Procedure Section 22, which states that an "action" is:

"an ordinary proceeding in a court of justice by which one party prosecutes another for the declaration, enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense."

This definition is clearly limited to actions in court. However, Code of Civil Procedure Section 22 is not applicable in all cases. One California appellate court declined to apply the Section 22 definition when it determined that some administrative proceedings were covered by a statute permitting payment of attorney fees in certain "actions". (Best v. California Apprenticeship Council (1987) 193 Cal.App.3d 1459, 240 Cal.Rptr. 1). The court ruled that the definition of "action" in

Section 22 had nothing to do with distinguishing between judicial and administrative proceedings. The court then looked to the overall purpose of the attorney fees statute and held that the term "actions" as used in that statute applied to administrative actions under certain circumstances.

Therefore, even though a cleanup and abatement order is not an "action" as defined in Code of Civil Procedure Section 22, it may be concluded that it is an action as that term is used in Corporations Code Section 2010(a).<sup>2</sup> When the meaning of a statute is not clear, it is proper to look at its underlying purpose to interpret its meaning. (Leslie Salt Company v. San Francisco Bay Conservation & Development Commission (1984) 153 Cal.App.3d 605, 200 Cal.Rptr. 575).

The purpose of Section 2010(a) is "to stop further doing of business as a going concern and limit corporate activities to winding up". (Boyle v. Lakeview Creamery Co. (1937) 9 Cal.2d 16, 68 Pac.2d 968, 970, interpreting predecessor statute Civ.C. Section 399). Enforcement of the Order would be

<sup>2</sup> Petitioner cites a Tenth Circuit case which holds that Section 2010 applies only to civil actions (United States v. Safeway Stores (1944) 10th Cir.) 140 F.2d 834). However, that case is not binding in California and has been disapproved by the Ninth Circuit Court. "If Safeway Stores retains any vitality, it is limited to the proposition that corporate existence following dissolution must be determined under state law." (United States v. Mobile Materials, Inc. (1985) 776 F.2d 1476). The Ninth Circuit has held that Section 2010 applies to federal criminal prosecutions as well as civil actions (id.).

consistent with this purpose. The Order does not require Trans-Tech to resume its business activities. It requires Trans-Tech to cleanup the pollution it left behind when it closed its business. And so cleanup activities would be a last step in closing out Trans-Tech's business. As noted earlier, the California Supreme Court has held that abatement of a nuisance is an appropriate activity for shareholders of a dissolved corporation which caused the nuisance. (Katenkamp v. Superior Court, supra 108 Pac. at 3).

When interpreting Section 2010(a) the court in the Southland Plumbing case noted that:

"California has an interest in allowing injured residents to recover for injuries incurred within the state prior to dissolution which, in some cases, have not manifested themselves before dissolution. California also has an interest in assuring that codefendants jointly liable for the damages are not required to pay the share of damages attributable to dissolved corporations." (Allen v. Southland Plumbing, supra 201 Cal.App.3d at 65, 246 Cal.Rptr. at 862)."

The same state interests noted by the Southland Plumbing court are present here. There is a public interest in protecting water quality. The Legislature has declared that "the state must be prepared to exercise its full power and jurisdiction to protect the quality of the waters in the state from degradation...". (Water Code Section 13000, see generally, United States v. State Water Resources Control Board (1986) 182 Cal.App.3d 82, 227 Cal.Rptr. 161). The Legislature has established the State and Regional Boards to protect that water quality and has prescribed specific administrative procedures for

achieving that goal. (Water Code Division 7, commencing with Section 13000, the Porter-Cologne Water Quality Control Act). The cleanup and abatement order is one of those legislatively prescribed procedures. (Water Code Section 13304). To interpret Section 2010(a) narrowly so that it does not encompass cleanup and abatement orders would undermine the legislative purpose of Water Code Section 13304.

The state interest in assuring codefendants jointly liable for damages are not required to pay the share of damages attributable to a dissolved corporation is also at issue here. Wright, which had operated a gas station at the Property for only a few months when the pollution was discovered, has borne most of the cost of the cleanup. The Regional Board record indicates that Trans-Tech has contributed nothing to the effort. A narrow interpretation of Section 2010(a) would free Trans-Tech from any obligation to share in the cost of removing hazardous materials which it discharged to the environment.

### III. CONCLUSION

Considering the underlying purpose of Section 2010(a) to permit a dissolved corporation to continue for the purpose of winding up and the legislative intention that water pollution be regulated by means of administrative actions, this Board concludes that the term "actions" as used in Section 2010(a) includes cleanup and abatement orders issued under Water Code Section 13304. Therefore, the Order can be enforced against Trans-Tech a dissolved corporation.



IV. ORDER

The petition of Trans-Tech Resources, Inc. is dismissed.

CERTIFICATION

The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on August 17, 1989.

AYE: W. Don Maughan  
Edwin H. Finster  
Eliseo M. Samaniego  
Danny Walsh

NO: Darlene E. Ruiz

ABSENT: None

ABSTAIN: None

  
Maureen Marche  
Administrative Assistant to the Board

